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SEP 25 1989

89-00442

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Highways, Roads and Bridges -  
County Funds - Scales

Funds in the Winston County road department fund from the 7¢ and 4¢ gasoline tax proceeds and from petroleum inspection fees cannot be used to purchase scales and hire personnel to enforce weight limits on county roads. Other road department funds may be used for this purpose if they are not earmarked for other uses.

Dear Mr. Manasco:

This opinion is issued in response to your request for an opinion from the Attorney General.

QUESTION

Can road department funds of Winston County be used to purchase scales and pay personnel to enforce weight limits on county roads?

FACTS AND ANALYSIS

You informed me that the road funds of Winston County come chiefly from gasoline tax proceeds.

Code of Alabama 1975, § 40-17-30, et seq., provides for a 7¢ gasoline tax. The distribution and use of the 7¢ gasoline tax proceeds is provided for at § 40-17-70, et seq. Among the uses of these proceeds allowed by a county are the payment of a portion of the salaries of the members of the county commission (§ 40-17-75) and portion of the salaries of the clerks of the governing bodies (§ 40-17-76), the construction and maintenance of streets of a municipality located in the county (§ 40-17-79) and the construction and maintenance of highways and traffic control areas on school property (§ 40-17-80).

Section 40-17-78(2) states, regarding the use of the 7¢ gasoline tax proceeds by counties for highway purposes:

"Where the use is by a county, such use shall be for transportation planning, the construction, reconstruction, maintenance, widening, alteration and improvement of public roads and bridges as is now or may hereafter be provided by law, including payment of the principal of and interest on any securities at any time issued by the county pursuant to law for payment of which all or any of the net tax proceeds were or may be lawfully pledged, and such use may also be for the purpose and subject to the provisions contained in section 40-17-75;  
. . . ."

I cannot find anything in these provisions that authorizes a county to use 7¢ gasoline tax proceeds to buy scales and pay personnel to enforce weight limits on county roads.

A 4¢ gasoline tax is provided for at Code of Alabama 1975, § 40-17-220, et seq. The use of these tax proceeds by counties is set out at § 40-17-224(b)(2):

"Where the use is by a county, such use shall be for the resurfacing, restoration, and rehabilitation of the paved county roads and bridges or bridge replacement on the county road system. Such funds shall not be used for new construction unless 90 percent of the county's paved road system has achieved a grade of 85 percent based on the state of Alabama highway department's annual maintenance report of county roads and bridges. These funds shall not be used for

the purchase of equipment. The net tax proceeds distributed to the county shall not be commingled with other funds of the county, including any other gasoline tax revenues, and shall be kept and disbursed by such county from a special fund only for the purposes hereinabove provided."

Thus, there is nothing in this provision that allows Winston County to use the 4¢ gasoline tax proceeds for the purchase of scales and to hire personnel to enforce weight limits on county roads.

Petroleum inspection fees received by a county are to be used as provided at § 8-17-91(a)(2):

"When the use is by a county, such use shall be for the construction, including draining, grading, basing, paving, signing and erosion items, of certain high density unpaved roads as herein provided and for the construction or reconstruction of bridges on such high density roads. The use may also be for the reconstruction, resurfacing, restoration and rehabilitation of the paved county roads and bridges or bridge replacement on the county road system. The use may also be for the construction, including draining, grading, basing and paving of certain unpaved roads, and reconstruction of certain paved roads accessing certain public and private recreational facilities and areas."

Thus, these proceeds cannot be used to purchase scales and to hire personnel to enforce weight limits on county roads.

If there are funds from other sources in the road department fund, such as an appropriation from the county general fund and these funds are not earmarked or such use is not prohibited by law, then such funds may be used to purchase scales and hire personnel to enforce weight limits on county roads in Winston County.

#### CONCLUSION

Funds in the Winston County road department fund from the 7¢ and 4¢ gasoline tax proceeds and from petroleum inspection


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fees cannot be used to purchase scales and hire personnel to enforce weight limits on county roads. Other road department funds may be used for this purpose if they are not earmarked or if such use is not prohibited by law.

I hope this sufficiently answers your question. If our office can be of further assistance, please do not hesitate to contact us.

Sincerely,

DON SIEGELMAN  
Attorney General  
By:

  
LYNDA K. OSWALD  
Assistant Attorney General

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